

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 30 2013

CERTIORARI TO SUMTER COUNTY
HON. WILLIAM JEFFERY YOUNG, CIRCUIT COURT JUDGE

S.C. SUPREME COURT

WAYNE COOLEY, PETITIONER

v.

STATE OF SOUTH CAROLINA RESPONDENT

PRO-SE PETITION FOR
WRIT OF CERTIORARI

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ISSUE PRESENTED

THE PCR JUDGE ERRED IN DENYING PETITIONER'S ALLEGATION THAT TRIAL COUNSEL AND PLEA COUNSEL WERE NOT INEFFECTIVE, IN THEIR ASSISTANCE TO RENDER HIS GUILTY PLEAS INVOLUNTARY IN THE CASE.

STATEMENT

PETITIONER WAYNE COOLEY PLED GUILTY TO ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT AND TWO COUNTS OF FIRST DEGREE CRIMINAL SEXUAL CONDUCT DURING THE NOVEMBER 2009 TERM OF SUMTER COUNTY GENERAL SESSIONS COURT BEFORE HON. JUDGE R. FERRELL COTHRAN.

App. 1-13 JUDGE COTHRAN SENTENCED PETITIONER TO IMPRISONMENT FOR A PERIOD OF TWENTY THREE (23) YEARS SERVED CONCURRENTLY ON EACH CONVICTION. PETITIONER DID NOT ENJOY THE BENEFIT OF A DIRECT APPEAL OF HIS CONVICTIONS AND SENTENCES. ARTHUR WILDER AND TODD WILLIAMS REPRESENTED PETITIONER AT THE PLEA PROCEEDINGS ON NOVEMBER 17, 2009. BOTH COUNSELORS ALSO REPRESENTED PETITIONER IN A TWO DAY TRIAL BEFORE A JURY ON NOVEMBER 16-17, 2009.

THAT TRIAL WAS STOPPED. THE PETITIONER ALLEGES THAT HIS TRIAL COUNSELS GAVE HIM THREATENING ADVICE DURING THE COURSE OF HIS TRIAL ABOUT FACTS THAT WAS ERRONEOUS.

ON APRIL 14, 2010 THE PETITIONER FILED A PCR APPLICATION WITH THE SUMTER COUNTY OFFICE OF THE CLERK OF COURT. App 15-22. THE RESPONDENT MADE A RETURN DATED APRIL 11, 2011 REQUESTING THAT A HEARING BE HELD IN RESPONSE TO PETITIONERS PCR APPLICATION, App 23-26.

A PCR HEARING WAS HELD ON MARCH 23, 2012 AT THE SUMTER COUNTY COURT HOUSE BEFORE HON. JUDGE R. JEFFERY YOUNG. App 27-52. PETITIONER WAS PRESENT AND REPRESENTED BY RICHARD T. JONES.

ON MAY 11, 2012 JUDGE YOUNG ISSUED AN ORDER OF DISMISSAL IN THE CASE. App 54-59.

PETITIONER APPEALS JUDGE YOUNG'S ORDER, THIS PETITION FOLLOWS....

ARGUMENT

The PCR Judge erred in denying petitioners' allegation that trial counsel and plea counsel were not ineffective in their assistance to render his guilty pleas involuntarily in the case.

The record before the PCR trial court is clear. The applicant testified at this evidentiary hearing that he was taken to the Sumter County Courthouse on November 16-17, 2009 to begin the trial in this case. App. 34 lines 1-9.

During the PCR hearing, petitioner testified that he only pled guilty because he was threatened with a life sentence if he did not take the negotiated plea offer of twenty-three (23) years presented to his trial counsel from the Solicitor between November 16-17, 2009. App. 37 lines 15-25.

Petitioner further testified that in explaining the threat of life without parole "LWOP" to him by his counsels' that counsel did inform him of the nature of the indicted offenses as most serious crimes that he could possibly get life with out parole. App. 38-39, lines 25-1-3.

The record is also clear to the point that the assistant attorney General Mary Williams tried to confuse the petitioner by having petitioner to recant his own allegation by eliciting that... there wasn't an actual threat or him actually being threatened if he did not take the negotiated twenty three years offered after evidence had been presented during the two day trial, November 16-17, 2009.

The petitioner testified that the victim got up on the witness stand and use or gave her statement. App. 34-35. The petitioner furtively alleged that his defense was, the sex was consensual, and that she was seventeen years old.

Again the petitioner testified he only pled guilty because it was obvious his counsel retorted back to the threat of the life sentence. App. 40 line 16-24.

Last of the petitioners testimony at the PCR hearing was the reason that the DNA matching up was that the victim testified at some point while she was on the witness stand, that she, the witness stated to the petitioner while he took off his clothes and laid down that she then got on top of him. App. 38 lines 1-18.

The PCR Judge was in err. The PCR Judge avers in his findings of fact and conclusions of law that his court had the opportunity to review the record in its' entirety. This is prejudicial error, the record is clear from testimony from petitioner and Auther Wilder that a trial was held before the petitioner was threatened to accept a negotiated plea of twenty-three years on the second day of his jury trial. The petitioner made several stated admissions before the court he was pressured into pleading. The PCR Judge was clear about the petitioners' testimony at the PCR evidentiary hearing. That he was threatened with with the potential life sentence. App. 57 ORDER OF DISMISSAL PARAGRAPH 1 OF PAGE 4 OF 6 PAGES.

Also that the threat compelled him ahead, to forgo the trial because counsels was aggressive in asserting "life w/o parole" if he was convicted. That was misinformation and coercion with threat of a life sentence. The PCR Judge did not have before him any portion of the transcript from the November 16-17, 2009 trial proceedings.

The testimony of Auther Wilder supports the petitioners allegation of him feeling threatened into accepting a negotiated plea that stopped the trial in this case.

The PCR Judge furtively averred he has heard the testimony at the post-conviction relief hearing closely pass upon their credibility

and weigh their testimony accordingly. In absent of Todd Williams.

The PCR Judge asserted that the applicant faced strong evidence of guilt in each of the three cases. Not true, this assessment is based on conjecture and mere speculation. In fact, at first victims trial, petitioner gave testimony also in response to victims testimony and written statements. App. 34 lines 24-25, App. 35 lines 1-11. The record is clear the victim gave testimony and Mr. Cooley recited that testimony under oath. App 35, lines 1-25, App. 36-38. Where he, petitioner testified that first victim did under oath said, the statement that she said it herself that "I took my clothes off and laid down and she got, she then got on top of me. She stated into the record let me get on top of you, let me ride you for a moment. App 38, lines 3-9.

Authur Wilder testified before the PCR Judge that, on May 22, 2009 Mr. Williams and himself visited Mr. Cooley. App. 43 lines 13-18 and that him and Mr. Williams established that the sex was consensual. App. 44 lines 1-8.

The petitioner evoked two allegations before the PCR Judge during his evidentiary hearing in support of being threatened into pleading guilty . A conflict of interest of Mr. Williams. The record held a conflict was definite abound. As Authur Wilder testified also that, Jack Howie appointed him to assist Mr. Williams instead of taking the case before a circuit Judge to adjudicate the conflict issue. App. 43 App. 46 lines 17-25 and App. 47 lines 1-5. In violation of petitioners substantial rights of having the courts hear and decide the issue alleged in itself is prejudice alone, coupled with a stopped two-day trial and lead counsel of the conflict issue began to negotiate or receive talk of negotiation when the evidence is clear that the sex was consensual. As to the evidence being strong, it was the very opposite in this case. In this case, Authur Wilder testified at the PCR evidentiary hearing to the fact that him and Mr. Williams did some investigation and made contact with the victims boyfriend. 6.

App. 44, We did discover with respect to the first victim that they actually went to trial on that she had a boyfriend so the state was quite dismayed (FN-1) when we produced the boyfriend on our witness list which gave rise to the offer. There is no record before the court to refute that anytime Mr. Cooley was presented with a plea negotiated before the jury was selected. So the conflict with Mr. Williams did create a situation that compel Mr. Cooley to feel threatened into pleading. The testimony before the PCR Judge is sufficient in support of consensual sex. The PCR Judge asserts the applicant entered his guilty plea after the victims testimony, App. 58, paragraph 3 of page 5 of 6 in order of dismissal, therefore he was threatened and compelled and chose to enter his plea prior to calling the boyfriend or any defense in this case.

[FN-1 DISMAYED, DISHEARTENED, DEPRIVED OF COURAGE, RESOLUTION, AND INITIATIVE THROUGH THE PRESSURE OF SUDDEN FEAR OR ANXIETY OR GREAT PERPLEXITY]

THE PCR JUDGE RULE AS FOLLOW...

Counsel was not deficient in informing [petitioner] of the possible sentence[s] he faced if convicted of the charges arising out of all three separate incidents [as] as counsel in fact should inform a defendant of the possible sentences he faces. [petitioners] desire to plead guilty to avoid a life sentence does not render his plea, involuntary- Wicker v. State 310 S.C. 8, 425, S.E. 2d 25, (1992) (Pleading guilty to preclude exposure to the death penalty does not in and of itself, render an otherwise valid plea defective]. True to Wicker, Supra- Wicker was not threatened or compelled by threats to plea by his counsel. Nor was their evidence in Wicker of a conflict of interest, also in Wicker the evidence was overwhelming of his guilt.

And to the right of informing a client of possible sentences, Attorneys also have a right not to misinform their clients by constitutional law and statutory law.

If is a conjecture, an conjecture is an hypothesis, a hypothesis is not factual. The facts of Mr. Cooleys' case is clear. The state did not serve Mr. Cooley with notice to seek a life sentence pursuant to SC CODE Ann. §17-25-45 (1996) so any correlations to life without parole under §17-25-45 is not supported with by facts but is supported only by mere speculation as to the results. And prejudice arose from this misinformation to Mr. Cooley that render his plea Involuntary and counsels deficiency was ineffective assistance of trial and plea counsel.

The PCR court was in err in finding the applicant has not established any constitutional violations that would require relief of his application.

The question to be answered in resolving a complaint against threatened coercion in a forced guilty plea is where under all of the facts and circumstances ones' guilty plea was voluntary and understandingly entered.

Here it was clear appellants fear of a life without parole **sentence** and lead counsels conflict of interest before trial, and the lack of the States' evidence to support a sufficient violation of "CSC" in the first degree was compelling enough to him, he was going to be railroaded by the system.

After the victim testified at the first case called to bar, that the sex was consensual, that trial stopped right then. The lead counsel who was accused of the conflict of interest with Mr. Cooley begin a bargaining with the solicitor, which had no right without his client approval or consent.

The trial at this instant was Mr. Cooley pleading not guilty, and chose to have this case settled before a jury of his peers, but not so. And to the PCR Judges' rule in his conclusion, App.59, page 6 of 6 of order of dismissal, applicant has not established any constitutional violations. This is err.

The SC General Assembly by legislation create for statutory law statute 17-25-45 with two pertinent parts, (C-1) "MOST SERIOUS OFFENCES" and (C-2) "SERIOUS OFFENSES", this statute also has a pertinent part that provides; Subsection (H) of this statute requires a minimum of ten days written notice prior to a trial of the solicitors intention to invoke the statute.

As of January 1, 1996 under S.C. Code Ann. §17-25-45 (supp.2000), This legislation became popularly known as "TWO STRIKES" or "THREE STRIKES" because it mandated life imprisonment without the possibility of parole. Upon a second conviction of a "most serious offense" conviction, life without parole is mandatory. This subsection is (C) (1) and lists some twenty eight "most serious offenses", first and second degree criminal sexual conduct are among those listed, kidnapping and conspiracy to kidnap.

A split decision by the court of appeals recently held that the penalties under the statute are unavoidable unless both the defendant and his counsel each have received written notice. In Mr. Cooleys' case, Mr. Cooley was indicted on April 5, 2007 count one- criminal sexual conduct (1st degree). Count two- assault with intent to commit "CSC" (1st degree) and count three- kidnapping. No notice given that any of these charges will be used to enhance Mr. Cooley.

On February 21, 2008 again the Sumter County Jurors present upon **their** oath. Count one Kidnaping, count two- Criminal sexual conduct in the first degree. On November 17, 2009 the solicitor Mr. Connor read into the record before the court, App. page 2 "this is indictment No. 2008-GS-43-223. The defendant Wayne Lewis Cooley has indicated to us that he would plead guilty on the case we are trying right now, which is indictment No.2008-223. I believe you have the paper work on that.

Under these two indicted counts, upon conviction Mr. Cooley only could have been enhanced to life imprisonment without the possibility of parole. Only after he and his counsel Mr. Williams has been served notice, without the service of the notice, the courts lacked the jurisdiction to impose a "LWOP" sentence so Mr. Cooley guilty plea was rendered involuntarily.

Counsel has a duty, a constitutional duty not to misinform his client. In this case the trial had begun on November 16, 2009, it received testimony from the first victim herself. Evidence was overwhelming that Mr. Cooley was to be found innocent of the charge of 1st degree "CSC" or Kidnaping and also the remaining counts indicted on July 17, 2008. Count one- Criminal sexual conduct in the first degree, count two- kidnaping and count three- possession of a knife during the commission of a violent crime. Mr. Cooley has a constitutional right to be appraised to what he call upon to defend. No notice to seek "LWOP" was served. Counsel misinformed his client, Mr. Cooley testified of the conflict of interest between Todd Williams and himself. Mr. Cooley testified his trial was stopped after the jury heard the victims

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testimony the sex was consensual. Mr. Cooley alleges he plead guilty only after he had been threatened with life without parole.

CONCLUSION

Based on the foregoing argument, petitioner request that the court reverse the PCR courts decision and grant the petitioner a new trial on the merits of the evidence against him before a jury of his peers.

Respectfully Submitted,

s/- Wayne Lewis Cooley
Wayne Lewis Cooley

DATE: April - 29 - 2013

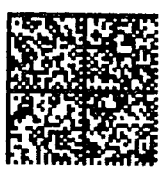
Mr. Wayne's Cockey # 1168807
Broad River Care, Inst.
Marion Unit # 120
4460 Broad River Rd.
Columbia, SC 29210

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